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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,903	09/26/2003	Richard F. Gladney	SMCY-P01-104	8016
28120	7590	07/21/2004	EXAMINER	
ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/671,903	Applicant(s) GLADNEY, RICHARD F. <i>SL</i>	
	Examiner Sunil Singh	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 18-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, 18-23 are, drawn to a mattress, classified in class 5, subclass 727.
- II. Claims 14-17 are, drawn to a box spring, classified in class 5, subclass 246.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as a seat cushion without the support of a box spring. Group II has separate utility such as a trampoline without the use of a mattress. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Edward Kelley on 7/14/04 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13, 18-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-17 are hereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-13, 18-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims call for the central region to have a firmness **reduced** by about ten percent to about thirty percent **relative** to other regions of the mattress; however, the specification is contrary to such ratio as evidenced on page 6 of the specification wherein it is stated that it is ten percent to thirty percent **firmer** in the center region 102 than in the abutting side regions 104. Such contrary ratios make one skilled in the art unable to make and/or use the invention as called for.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,2,6,9,12,13,18,19,21,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Talbert et al. or Bonaddio et al. or Fultz et al. (US 4086675, 5537699, 3516901).

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Talbert et al., Bonaddio et al. and Fultz et al. all disclose a mattress comprising: a head end; a foot end; a first side and a second side; and a center region traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a center ridge over repeated uses of the mattress. The center region is separated by an approximately equal distance from the first side and the second side. The center region has a firmness reduced by about ten percent to about thirty percent relative to other regions of the mattress (see col. 3; col. 3; col. 2 and Figs. 1,6 respectively). The core is foam.

9. Claims 1,2, 9-11, 18,19,21,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Klancnik (US 4092749).

Klancnik discloses a mattress comprising: a head end; a foot end; a first side and a second side; and a center region traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a center ridge over repeated uses of the mattress. The center region is separated by an approximately equal distance from the first side and the second side. The center region has a firmness reduced by about ten percent to about thirty percent relative to other regions of the mattress (see col. 5). The core is coil spring.

10. Claims 1,2,21 are rejected under 35 U.S.C. 102(b) as being anticipated by Sabalaskey (US 5704085).

Sabalaskey discloses a mattress comprising: a head end; a foot end; a first side and a second side; and a center region traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a

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center ridge over repeated uses of the mattress. The center region is separated by an approximately equal distance from the first side and the second side (see col. 4).

Quilted/upholstery material (23,32).

11. Claims 1,2,21, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry or Jarvis (US 2345421, 2859505).

Perry and Jarvis both disclose a mattress comprising: a head end; a foot end; a first side and a second side; and a center region traversing the mattress from the head end to the foot end, the center region including one or more materials that mitigate the emergence of a center ridge over repeated uses of the mattress. The center region is separated by an approximately equal distance from the first side and the second side (see page 2, col. 2 respectively). Compensation means/adjustable members.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik or Sabalaskey or Perry or Jarvis in view of Kentor et al. (US 3608107).

Talbert et al., Bonaddio et al., Fultz et al., Klancnik, Sabalaskey, Perry and Jarvis all disclose the invention substantially as claimed. However, they all are silent about their

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mattress being Queen/King size. Kentor et al. teaches having adjustable mattress firmness on Queen/King size mattress (see col. 3). It would have been considered obvious to one of ordinary skill in the art to modify either Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik or Sabalaskey or Perry or Jarvis to include their respective firmness of either Queen/King size mattress as taught by Kentor et al. since different size mattress are old and well known and it would be a design choice to have varying firmness on full, Queen, or King size mattress.

14. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik or Sabalaskey or Perry or Jarvis.

Talbert et al., Bonaddio et al., Fultz et al., Klancnik, Sabalaskey, Perry and Jarvis all disclose the invention substantially as claimed. However, they all are silent about their center region being about 2 to 12 inches wide. It would have been considered obvious to one of ordinary skill in the art to modify either Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik or Sabalaskey or Perry or Jarvis to have their center region be about 2 to 12 inches wide since such a modification is a design choice. Such a modification prevents the center of the mattress from totally collapsing inwardly.

15. Claims 6-8, 18-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabalaskey in view of Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik.

Sabalaskey discloses the invention substantially as claimed. However, Sabalaskey is silent about the firmness in the central region being reduced by 10 to 30 percent relative to other regions of the mattress. Talbert et al., Bonaddio et al., Fultz et al. and Klancnik

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all teach firmness in the central region being reduced by 10 to 30 percent relative to other regions of the mattress. It would have been considered obvious to one of ordinary skill in the art to modify Sabalaskey by making his firmness in the central region being reduced by 10 to 30 percent relative to other regions of the mattress as taught by either Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik since this is a design choice. Such parameters allow for comfort in the center of the bed while allowing one to sit on the edge of the bed without creating excessive wear.

16. Claims 6, 9, 18-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry or Jarvis in view of Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik.

Perry and Jarvis both disclose the invention substantially as claimed. However, they are both silent about the firmness in the central region being reduced by 10 to 30 percent relative to other regions of the mattress. Talbert et al., Bonaddio et al., Fultz et al. and Klancnik all teach firmness in the central region being reduced by 10 to 30 percent relative to other regions of the mattress. It would have been considered obvious to one of ordinary skill in the art to modify either Perry or Jarvis by making their firmness in the central region being reduced by 10 to 30 percent relative to other regions of the mattress as taught by either Talbert et al. or Bonaddio et al. or Fultz et al. or Klancnik since this is a design choice. Such parameters allow for comfort in the center of the bed while allowing one to sit on the edge of the bed without creating excessive wear.

Conclusion

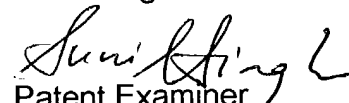
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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh


Patent Examiner
Art Unit 3673

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7/14/2004